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09/848,573	05/03/2001	Cary Lee Bates	ROC920010064US1	6829

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EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/848,573

Applicant(s)

BATES ET AL.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 6, 17, 19-22, 24-26, 28, 33 and 35-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16, 18, 23, 27, 29-32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Acknowledgements*

1. Applicants' amendment filed March 22, 2004 (Paper No. 4) is acknowledged.

Accordingly, claims 1-48 remain pending.

2. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

### *Restriction*

3. Applicants' election with traverse of Group I (claims 1-18) in Paper No. 4 is acknowledged. The traversal is on the ground(s) that "the claims are not distinguishable on the basis of a network interface."<sup>1</sup> Moreover, Applicants have amended claim 1 to recite the network interface and thus attempt to make the restriction requirement, as noted in the previous Office Action, erroneous. Because of Applicants' amendment, the Examiner notes the following reasons for maintaining the restriction requirement.

4. Between groups I and II, the process as claimed can be used to practice a materially different apparatus—one that does not require a command input interface. The requirement is still deemed proper and is therefore made final.

5. Between Groups I and III, Applicants argue that "claim 1 (of Group I) and claim 19 (of Group II) are identical counterparts of two different statutory classes, i.e., process and article of

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<sup>1</sup> Applicants' Remarks filed March 22, 2004 (part of Paper No. 4), Pages 10-11.

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manufacture. [Emphasis Applicants']"<sup>2</sup> Because they are "identical counterparts," the Examiner finds that the two groups of inventions (i.e. Groups I and Group II) are not patentably distinct.

The restriction between Group I and Group III is hereby withdrawn. Should Applicants amend any group such that one group of inventions is no longer patentably distinct from another group, the Examiner will reinstate the restriction at that time. See MPEP §811.02 stating that restriction can be made at any time up to the Final action.

6. Applicants' arguments regarding the restriction between Groups I and IV have been considered but is unpersuasive. Applicants' first argue that "it is unclear as to how invention IV is capable of 'receiving a refund' as suggested by the Examiner."<sup>3</sup> First, the Examiner never stated that the "invention IV is capable of receiving a refund." A careful review of the restriction requirement will reveal that the Examiner simply stated, "invention IV has separate utility such as a method of returning an article and receiving a refund."<sup>4</sup> Second, Applicants' argument of a lack of enablement for claims 35 is acknowledged and will be noted in any subsequent continuation, divisional, continuation-in-part application(s).<sup>5</sup> However, enablement is not an issue during restriction practice. The requirement is still deemed proper and is therefore made final.

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<sup>2</sup> Applicants' Remarks, Paper No. 4, Pages 11, ~lines 13 and 14.

<sup>3</sup> Applicants' Remarks, Paper No. 4, Pages 11, ~lines 22 and 23.

<sup>4</sup> See the previous Office Action, Paper No. 3, Paragraph No. 7, Page 3.

<sup>5</sup> See *Microsoft Corp. v. Multi-Tech Sys*, 69 USPQ2d 1815, 1823, (Fed. Cir. 2004)("In the past, we have held that the prosecution history of one patent is relevant to an understanding of the scope of a common term in a second patent stemming from the same parent application.").

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7. Regarding Applicants' traversal of the restriction between Groups II and III, Applicants argue that the "[t]he preamble of claim 23 recites: 'A signal bearing medium . . .'"<sup>6</sup> and concludes the restriction is improper. The Examiner agrees with Applicants' statement that the preamble of 23 recites a "processor" and is in fact, exactly as Applicants quote. Having determined that Applicants and the Examiner agree on what the preamble of claim 23 recites, Applicants' remaining arguments on this matter are simply not present. The Examiner therefore concludes that Applicants' arguments are unpersuasive. The requirement is still deemed proper and is therefore made final.

8. Finally, Applicants traverse the restriction between Groups II and V and argue that the restriction is improper because "Group III are directed to an article of manufacture, not an apparatus."<sup>7</sup> This argument too is unpersuasive. In this case, it is immaterial as to whether the claims are directed to an article of manufacture or an apparatus for its practice for both are product claims. "Product claims are claims that are directed towards either machines, manufactures, or compositions of matter." MPEP §2106 II C. The restriction thus being between a process and a product. Applicants' arguments have been considered but are unpersuasive. The requirement is still deemed proper and is therefore made final.

9. Claims 19-22 and 35-48 are withdrawn from further consideration pursuant to 37 C.F.R. §1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

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<sup>6</sup> Applicants' Remarks, Paper No. 4, Pages 12, 1<sup>st</sup> paragraph.

<sup>7</sup> Applicants' Remarks, Paper No. 4, Pages 12, 2<sup>nd</sup> paragraph.

*Election of Species*

10. Applicants' election with traverse of Species A in Paper No. 4 is also acknowledged.

The traversal is on the ground(s) that claim 1 is generic. The Examiner adapts Applicants' statement that claim 1 is generic to Species A and Species B. Applicants also state that claims 6 and 18 are directed to Species B. Nevertheless, this is unpersuasive because Applicants have declined to argue that the species are patentably distinct. The requirement is still deemed proper and is therefore made final.

11. Claims 6, 18, 28, and 33 are also withdrawn from further consideration pursuant to 37 C.F.R. §1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

12. Claims 1 and 23 link Inventions I and III. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 1 and 23. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicants are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. §121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP §804.01.

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13. If Applicants expressly admit on the record that the two species (i.e. Species A and Species B) are not patentably distinct, the Examiner will withdraw the election of species requirement.

14. Accordingly, an action on the merits of claims 1-5, 7-16, 18, 23, 27, 29-32, and 34 is set forth below.

***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

15. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 3, 5, 23, 27, 29-32, and 34 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow.

17. Claims 3 and 5 are unclear because it is not known if the steps recited are either ‘in addition to’ or ‘in place of’ the steps recited in claim 1.

18. In claim 23, the scope of the invention is unclear because Applicants have recited actions that occur outside the single “medium” and “processor” (“in a network of vending machines . . .”)

***Claim Rejections - 35 USC §102***

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

20. Claims 1-5, 7-16, and 18, as understood by the Examiner, are rejected under 35

U.S.C. §102(e) as being anticipated by Yap et. al. (U.S. 6,711,646 B1)(“Yap”). Yap discloses receiving a purchase order for an item (inherent in ordering one of the media content items); transmitting a request for the item (from 524); receiving a response indicative of whether the item is available from at least one other vending machine (the machine in this case being the server 524).

21. Claims 1-5, 7-16, and 18, as understood by the Examiner, are rejected under 35

U.S.C. §102(b) as being anticipated by Jenkins et. al. (U.S. 6,264,104 B1)(“Jenkins”). Jenkins discloses receiving a purchase order for an item (inherent in ordering one of the items); transmitting a request for the item (to the host); receiving, back at the vending machine, a response indicating whether the item is available at at least one other vending machine (at another location).

### ***Claim Rejections - 35 USC §103***

22. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are



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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 1-5, 7-16, and 18, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Yap.<sup>8</sup> It is the Examiner's principle position that claims 1-5, 7-16, and 18 are anticipated because of the inerencies noted above.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Yap to include a purchase order.

24. Claims 1-5, 7-16, and 18, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Jenkins in view of Schwartzendruber (U.S. 5,207,784).<sup>9</sup> Again, it is the Examiner's principle position that claims 1-5, 7-16, and 18 are anticipated by Jenkins because of the inerencies noted above.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Yap as taught by Schwartzendruber to include using the inventory control systems to access item availability. Such a modification would have alerted the user if desired item was available elsewhere. Additionally, such a modification would have helped alert a user that an aging sale item was available locally at an adjacent vending machine.

25. Claims 23, 27, 29-32, and 34, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Yap. Because Inventions I and III are not patentably distinct, the rejection of Group III stands or falls with the allowance or rejection of Group I.

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<sup>8</sup> See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

<sup>9</sup> *Id.*

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26. Likewise, claims 23, 27, 29-32, and 34, as understood by the Examiner, are also rejected under 35 U.S.C. §103(a) as being unpatentable over Jenkins in view of Schwartzendruber.

Because Inventions I and III are not patentably distinct, the rejection of Group III stands or falls with the allowance or rejection of Group I.

27. After careful review of the specification and prosecution history, the Examiner is unaware of any desire—either expressly or implicitly—by Applicants to be their own lexicographer and to define a claim term to have a meaning other than its ordinary and accustomed meaning. Therefore, the Examiner starts with the heavy presumption that all claim limitations are given their ordinary and accustomed meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001) (“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).<sup>10</sup>

In accordance with the ordinary and accustomed meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also MPEP §2111.

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<sup>10</sup> It is the Examiner’s position that “plain meaning” and “ordinary and accustomed meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

However, if Applicants disagree with the Examiner and have either (a) already used lexicography or (b) wish to use lexicography and therefore (under either (a) or (b)) desire a claim limitation to have a meaning other than its ordinary and accustomed meaning, the Examiner respectfully requests Applicants in their next response to expressly indicate<sup>11</sup> the claim limitation at issue and to show where in the specification or prosecution history the limitation is defined. Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).<sup>12</sup> The Examiner cautions that no new matter is allowed.

Applicants are reminded that failure by Applicants in their next response to properly traverse this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue

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<sup>11</sup> “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

<sup>12</sup> See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (“[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]”); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.01, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

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entirely will be considered a desire by Applicants to forgo lexicography in this application and to continue having the claims interpreted with their broadest reasonable interpretation.<sup>13</sup>

Additionally, it is the Examiner's position that the above requirements are reasonable.<sup>14</sup> Unless expressly noted otherwise by the Examiner, the preceding discussion on claim interpretation principles applies to all examined claims currently pending.

28. To the extent that the Examiner's interpretations are in dispute with Applicants' interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.<sup>15</sup> Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.<sup>16</sup> Finally, the following list is not intended to be exhaustive in any way:

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<sup>13</sup> See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . [Emphasis added.]"

<sup>14</sup> The Examiner's requirements on this matter are reasonable on at least two separate and independent grounds. First, the Examiner's requirements are simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants is not inadvertently overlooked by the Examiner. Second, the requirements are reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21<sup>st</sup> Century Strategic Plan, February 3, 2003 available at [www.uspto.gov/web/offices/com/strat21/index.htm](http://www.uspto.gov/web/offices/com/strat21/index.htm) (last accessed April 8, 2004).

<sup>15</sup> While most definition(s) are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

<sup>16</sup> See e.g. *Brookhill-Wilk 1 LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed. Cir. 2003) (abstract dictionary definitions are not alone determinative; "resort must always be made to the surrounding text of the claims in question").

*Network*: “A group of computers and associated network devices that are connected by communications facilities.”<sup>17</sup>

*Information “ 2 a . . . (3): FACTS, DATA . . . ”* Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition, Merriam-Webster Inc., Springfield, M.A., 1997.

### *Conclusion*

29. The following references are considered pertinent to Applicants’ disclosure: Bowman et. al. (U.S. 6,460,163 B1); Defosse (U.S. 6,457,038 B1); and Walker et. al. (U.S. 6,119,100).

30. The following two (2) citations to the Manual of Patent Examining Procedure (“MPEP”) apply to this Office Action: MPEP citations to Chapters 200, 700, 1800, and 2100 are from the MPEP 8<sup>th</sup> Edition, Rev 1, February 2003. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

31. In accordance with the USPTO’s goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicants disagree with any

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<sup>17</sup> Based upon Applicants’ disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See *e.g. Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as “a technical dictionary” to define the term “flag.” See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled ‘New Terminology.’

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factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>18</sup> the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. To respond to this Office Action by facsimile, fax to (703) 872-9306.



Andrew J. Fischer  
Patent Examiner  
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AJF  
April 8, 2004

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<sup>18</sup> *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.